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ment of any kind of conversion, regardless of whether it is larceny, embezzlement, or false pretenses; if there is consent, there is no conversion. There is nothing in Senator Nelson's statement, or in any of the legislative history of the Act, to suggest that the owner's consent (as in the case of common-law larceny) must be lacking *at the time the thief initially takes possession of the car.* So long as the car has previously been wrongly converted to the thief's own use—regardless of whether the conversion is subsequent to the acquisition of possession—the car is "stolen" for purposes of the Dyer Act.

The conflicting views among the courts of appeals on this issue developed, for the most part, after the decision of the Tenth Circuit in *Hite* v. *United States*, 168 F. 2d 973, decided June 30, 1948, just after enactment of the 1948 revision of the Criminal Code (Act of June 25, 1948, ch. 645, 62 Stat. 683).[7] Thereafter the Department of Justice recommended, often in connection with other suggested changes,[8] that the meaning of the term be clarified by legislation, and, because of the possibility of legislation, did not seek review by this Court. Although the recommended

[7] See *Murphy* v. *United States*, 206 F. 2d 571 (C. A. 5, 1953); *Ackerson* v. *United States*, 185 F. 2d 485 (C. A. 8, 1950). But see, *e. g.*, *Carpenter* v. *United States*, 113 F. 2d 692 (1940), and *Abraham* v. *United States*, 15 F. 2d 911 (1926), both from the Eighth Circuit, which interpreted the word "stolen" in accordance with the state definitions of larceny. The *Abraham* case arose in Oklahoma, where larceny is defined by statute in the narrow common-law sense. The *Carpenter* case arose in Minnesota, where the definition of larceny includes embezzlement and other types of fraudulent taking.

[8] See, *e. g.*, H. R. 3379, S. 1384, 80th Cong., 1st Sess.; H. R. 2948 (relating solely to amendment to include "trailer, semi-

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 289

UNITED STATES OF AMERICA, APPELLANT

v.

JAMES VERNON TURLEY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court dismissing the information (R. 5–20) is reported at 141 F. Supp. 527.

JURISDICTION

The order of the District Court dismissing the information for failure to state an offense under 18 U. S. C. 2312, as that statute was construed by the District Court, was entered on May 18, 1956 (R. 21). A notice of appeal to this Court was filed on June 11, 1956 (R. 21), and this Court noted probable jurisdiction of the appeal on October 8, 1956 (R. 22). 352 U. S. 816. The jurisdiction of this Court to review on direct appeal an order dismissing an information, based on a construction of the statute on which the

information is founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether the word "stolen" as used in 18 U. S. C. 2312 (which prohibits the knowing transportation in interstate commerce of "stolen" motor vehicles) refers only to those unlawful takings which amount to common-law larceny.

STATUTE INVOLVED

18 U. S. C. 2312, which is Section 3 of the National Motor Vehicle Theft (Dyer) Act, 62 Stat. 806, provides:

> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

On April 19, 1956, a single-count information under 18 U. S. C. 2312 (*supra*) was filed against the appellee in the District Court for the District of Maryland. The information charged that the appellee, having in South Carolina lawfully obtained possession of an automobile from the owner for the purpose of driving some friends to their homes, did, without permission of the owner, and with intent in South Carolina to steal the automobile, convert it to his own use, and did unlawfully transport it in interstate commerce from South Carolina to Baltimore, Maryland, where he sold it without permission of the owner (R. 4).

On the appellee's motion (R. 4–5), the District Court dismissed the information on the ground that the word "stolen" as used in 18 U. S. C. 2312 refers only to those unlawful takings which amount to common-law larceny, and that the acts charged do not constitute common-law larceny (R. 20).[1]

SUMMARY OF ARGUMENT

When Congress passed the National Motor Vehicle Theft Act (commonly known as the Dyer Act), it did not define the meaning of the word "stolen" as used therein. The Government contends that the term encompasses all situations where a vehicle is appropriated without right and then transported in interstate commerce, regardless of whether at common law the theft would be deemed larceny, embezzlement, or false pretenses. The Court of Appeals for the Second, Fourth, Sixth, and Ninth Circuits have approved of this construction. The Fifth, Eighth, and Tenth Circuits, however, have equated "stolen" with larceny and have then proceeded to the common law to obtain a definition of larceny, with the result that in those circuits the statute is restricted to the scope of common-law larceny.

A. "Stolen" is not coterminous with larceny. "Stealing" was not a technical term of the common-law and thus has no common-law definition to restrict its meaning. In ordinary usage, the word denotes any dishonest transaction whereby one person obtains that which rightfully belongs to another, and deprives

[1] We do not take issue with the ruling of the District Court that the facts alleged in the information do not constitute common-law larceny.

the owner of the rights and benefits of ownership. This being the case, "stolen" as used in the Dyer Act should be read in the same manner. There is no basis for importing into the statute the technical limitations of common-law larceny simply because larceny is one of the offenses included within the scope of the term "stealing".

B. Moreover, the legislative history of the Dyer Act supports the conclusion that Congress used the comprehensive, non-technical word "stolen" in its ordinary sense. Congress, far from using "stolen" as coterminous with common-law larceny, appears to have used the term as synonymous with "theft." And common-law larceny is, of course, only one type of "theft." Even more significant is the evil which Congress sought to remedy through the Act. Congress was concerned, not with common-law distinctions as to how the thief acquired possession of the "stolen" automobile, but rather with the broad, general purpose of suppressing crime in interstate commerce. Whether the theft was accomplished by larceny, embezzlement, or false pretenses, the evil remained the same. The owner of the car was deprived of it, and state law was ineffective to protect him.

ARGUMENT

THE TERM "STOLEN," AS USED IN THE DYER ACT, ENCOMPASSES ALL CRIMES OF THEFT AND NOT ONLY THOSE UNLAWFUL TAKINGS WHICH AMOUNT TO COMMON-LAW LARCENY

It is the Government's contention that the word "stolen" is used in 18 U. S. C. 2312, the Dyer Act, to embrace all situations where a vehicle was appropri-

ated without right and then transported in interstate commerce, regardless of whether at common law the theft would be deemed larceny, embezzlement, or false pretenses. This construction of the statute is in accord with holdings of the Fourth, Sixth, and Ninth Circuits and is approved by the Second Circuit. *Boone* v. *United States*, 235 F. 2d 939 (C. A. 4) (false pretenses); *Breece* v. *United States*, 218 F. 2d 819 (C. A. 6) (embezzlement); *Wilson* v. *United States*, 214 F. 2d 313 (C. A. 6) (embezzlement); *Collier* v. *United States*, 190 F. 2d 473 (C. A. 6) (embezzlement); *Davilman* v. *United States*, 180 F. 2d 284 (C. A. 6) (embezzlement); *Smith* v. *United States*, 233 F. 2d 744 (C. A. 9) (embezzlement); *United States* v. *Sirugella*, 187 F. 2d 533, 534 (C. A. 2).[*] These courts have all adopted the definition given in *United States* v. *Adcock*, 49 F. Supp. 351, 353 (W. D. Ky.) (embezzlement):

> * * * that the word "stolen" is used in the statute not in the technical sense of what constitutes larceny, but in its well known and ac-

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[*] In the *Sirugella* case, a larceny was found to exist because the defendant-bailee intended to convert the automobile at the time the owner relinquished possession. However, Judge Augustus Hand said:

> Defendants say that a conviction under the Dyer Act cannot stand unless there is evidence sufficient to prove larceny under the narrowest definition of that crime at common law. Such a contention would not help the defendants even if it were sound—which we do not intend to intimate—for a narrow common law definition is not required under the Dyer Act. See *Davilman* v. *United States*, 6 Cir., 180 F. 2d 284; *Sturgeon* v. *United States*, 8 Cir., 151 F. 2d 386; *Lowry* v. *United States*, 10 Cir., 151 F. 2d [illegible]. * * *

> cepted meaning of taking the personal property of another for one's own use without right or law, and that such a taking can exist whenever the intent to do so comes into existence and is deliberately carried out regardless of how the party so taking the car may have originally come into possession of it.

On the other hand, the Fifth, Eighth, and Tenth Circuits have considered "stolen" as synonymous with larceny and held that the statute covers only thefts which would constitute common-law larceny. *Murphy v. United States*, 206 F. 2d 571 (C. A. 5) (false pretenses); *Ackerson* v. *United States*, 185 F. 2d 485 (C. A. 8) (false pretenses); *Hite* v. *United States*, 168 F. 2d 973 (C. A. 10) (false pretenses). In these cases, the courts first noted that "stolen" was not defined in the statute and then proceeded to the common law to obtain a definition—a definition not of "stolen", however, but of larceny. Since "stolen" was not a technical term of the common law (see *infra*, pp. 6–10), the reliance of these courts upon the definition of larceny is apparently explainable only on the ground that larceny is one of the offenses included in the word "stealing" and somewhat close in meaning. It is urged that the strained construction placed on the Act by these courts, and by the District Court in the instant case, is neither sound nor supported by evidence of Congressional intent.

A. THE TERM "STOLEN" HAS NO COMMON-LAW DEFINITION AND HENCE AFFORDS NO BASIS FOR EQUATING THE SCOPE OF THE DYER ACT WITH THE SCOPE OF COMMON-LAW LARCENY.

It is true that a criminal statute must be strictly construed. It is also true that federal courts have

held that, when a federal criminal statute uses a term known to the common law and does not define that term, the courts will apply the common-law meaning to it unless a contrary intent by Congress is indicated (R. 8.). But the word "stolen" (or "stealing") has no common-law definition. *United States* v. *Handler*, 142 F. 2d 351, 353 (C. A. 2), certiorari denied, 323 U. S. 741 (prosecution under the National Stolen Property Act, 18 U. S. C. 415, now 18 U. S. C. 2314, 2315); *Crabb* v. *Zerbst*, 99 F. 2d 562, 563 (C. A. 5) (prosecution for stealing property of the United States, 18 U. S. C. 99, 100, now 18 U. S. C. 641). It was never equated with larceny at common law. *Boone* v. *United States*, 235 F. 2d 939, 940 (C. A. 4). Therefore, the courts which hold "stolen" to be coterminous with larceny, to the exclusion of other theft crimes, base their "strict construction" of the Dyer Act on a false premise and ignore the scope of the evil Congress sought to remedy.[3]

Since this problem is one of definition, the history of the word "stolen" becomes important. As the Court of Appeals for the Fourth Circuit (in which the District Court in the instant case is situated) recently pointed out in *Boone* v. *United States, supra*, at 940:

> * * * "Steal" (originally "stale") at first denoted in general usage a taking through secrecy, as implied in "stealth", or through stratagem,

[3] "That criminal statutes are to be construed strictly is a proposition which calls for the citation of no authority. But this does not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature." *United States* v. *Bramblett*, 348 U. S. 503, 509–510; see also *United States* v. *Sullivan*, 332 U. S. 689, 693–694.

according to the Oxford English Dictionary. Expanded through the years, it became the generic designation for dishonest acquisition, but it never lost its initial connotation. Nor in law is "steal" or "stolen" a word of art. Blackstone does not mention "steal" in defining larceny—"the felonious taking and carrying away of the personal goods of another"—or in expounding its several elements. IV Commentaries 229 et seq.

Judge Hammond in *United States* v. *Stone*, 1881 C. C. W. D. Tenn., 8 F. 232, 247, concluded, "I do not find the word 'steal' used in defining larceny in any of the common-law authorities cited by Mr. Bishop, or elsewhere, from Lord Coke down", and again, "* * * it is not a technical word, in the strict sense of that term, but a common word applied to almost any unlawful taking, without regard to exactness of use or accurate technical terminology". See, too, *United States* v. *Jolly*, 1888 D. C. W. D. Tenn., 37 F. 108, 111. * * *

The District Court itself noted that "Black's Law Dictionary states that 'steal', besides being commonly used in indictments for larceny, may denote the criminal taking of personal property either by larceny, embezzlement or false pretenses, and may include the unlawful appropriation of things which are not technically the subject for larceny." The District Court also admitted that "this is probably the common, everyday meaning of the word" (R. 9). The court, however, failed to draw what we think is the inescapable conclusion from that fact, *i. e.*, that "stolen" as used in the Dyer Act includes any wrongful appro-

priation, whether or not it would constitute larceny at common law.[4]

The Fifth Circuit, although taking an opposing view under this statute, stated in *Crabb* v. *Zerbst*, 99 F. 2d 562, 565, in a prosecution for stealing government property:

> * * * Stealing, having no common law definition to restrict its meaning as an offense, is commonly used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another, and deprives the owner of the rights and benefits of ownership * * *.

See also *Morissette* v. *United States*, 342 U. S. 246, 260, involving a prosecution for stealing government property under 18 U. S. C. 641. Other cases which have declared that "stolen" has a broader scope than the technical term "larceny" include *United States* v. *O'Connell*, 165 F. 2d 697, 699 (C. A. 2), certiorari denied, 333 U. S. 964, and *United States* v. *DeNormand*, 149 F. 2d 622, 624 (C. A. 2), certiorari denied, 326 U. S. 756, 808, 811.[5] Cf. *United States* v. *Trosper*, 127 Fed. 476, 477 (S. D. Cal.).

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[4] The District Court evidently felt constrained to follow the holdings in what then constituted a majority of the circuits which had ruled on the question. Since the opinion of the District Court was rendered, both the Ninth Circuit in *Smith* v. *United States*, 233 F. 2d 744, and the Fourth Circuit (in which the District Court in the instant case is situated) in *Boone* v. *United States*, 235 F. 2d 939, have ruled that "stolen," as used in 18 U. S. C. 2312, is not restricted to those unlawful takings which amount to common-law larceny.

[5] Both the *O'Connell* and the *DeNormand* cases involved 18 U. S. C. 409 (now 18 U. S. C. 659), which penalized "whoever shall steal or shall unlawfully take" goods, baggage, or money comprising an interstate shipment.

Thus, the face of the statute, where the non-technical comprehensive word "stolen" is used, furnishes no basis for importing into the crime the technical limitations of common-law larceny. The common, ordinary word "stolen" should be given its common, ordinary meaning of any wrongful taking with intent to deprive the owner of his rights.

B. THE LEGISLATIVE HISTORY OF THE DYER ACT REFLECTS A CONGRESSIONAL UNDERSTANDING THAT THE TERM "STOLEN" IS DESCRIPTIVE OF ALL VEHICLES WRONGFULLY APPROPRIATED, WHETHER BY LARCENY, EMBEZZLEMENT, OR FALSE PRETENSES

Moreover, the legislative history of the Dyer Act supports the conclusion that Congress used the comprehensive, non-technical word "stolen" in its ordinary sense.

At the outset, it should be noted that Congress, far from using "stolen" as coterminous with common-law larceny, appears to have used the word as synonymous with "theft". And common-law larceny is, of course, only one type of "theft". See, *e. g.*, Bouvier's Law Dictionary (3d rev.), p. 3267. Thus, the enacting clause of the original Act (P. L. 70, 66th Cong., 1st Sess., Oct. 29, 1919, ch. 89, 41 Stat. 324) designates the Act as the National Motor Vehicle Theft Act. Again Mr. Dyer, who introduced the bill (H. R. 9203, 58 Cong. Rec. 5284), submitted an accompanying report (H. Rep. No. 312, 66th Cong., 1st Sess.) entitled *Theft of Automobiles*. See also 58 Cong. Rec. 6434.

Even more significant is the evil which Congress sought to remedy through the Act. As H. Rept. No. 312 (*supra*) states: "The purpose of the proposed law is to suppress crime in interstate commerce." See

58 Cong. Rec. 5472. Because of the problem created by the ending of state power at the state line, federal regulation was thought necessary. Congress was not concerned with common-law distinctions as to *how* possession of the "stolen" automobile had been obtained by the thief, but rather with the transportation of the automobile thereafter in the channels of interstate commerce. See 58 Cong. Rec. 5470–5478, 6433–6435.

As pointed out in *Smith* v. *United States*, 233 F. 2d 744, 747 (C. A. 9) (an embezzlement case like the instant one):

> * * * Automobile thieves may obtain cars in many ways. Typically an unattended car is taken. However, a thief may give a dealer a worthless check for a certificate of title. A trusted employee of an automobile dealer may have lawful possession of the stock of cars and later take them into another state and wrongfully sell them. These are larceny, false pretenses and embezzlement situations, but the evil is the same. The owner of the car is deprived of it, and state law is ineffective to protect him.
>
> Congress would have no reason to differentiate among the various theft crimes in view of its purposes in enacting Section 2312. The courts should not graft such a distinction on the statute.

In the instant case, the District Court quoted from House and Senate debates on the bill in support of its opinion that "stolen" is restricted in meaning to takings which amount to common-law larceny. The court stated (R. 7):

> Mr. NELSON. If the Senator from Iowa will allow me, I desire to say that if he will examine the authorities he will find that one of the elements of the offense of stealing is the deprivation of the owner of the thing stolen without his consent, and the words referred to by the Senator from Connecticut do no harm, though they are really surplusage. Their meaning is implied in the word "theft" or in the stealing. If the Senator will look at the textbooks he will find that a part of the element of the offense is depriving the owner thereof without his consent.

This statement merely indicates Senator Nelson's view—which we have no reason to challenge—that "stealing" in its ordinary sense imports a lack of consent on the part of the owner to the appropriation of his property. But this factor is an essential ele-

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ing it for the owner (and hence not "with intent to deprive the owner of the possession thereof"). The phrase was deleted because it was thought unnecessary since knowledge that the car was stolen was already an essential element of the offense under Section 4. As said by Senator Brandegee, who proposed the deletion:

> In other words, I think the insertion of the language to which I have called attention in section 4 throws a burden upon the Government which it is not necessary, in the interest of justice, to cast upon it, and provides a loophole for the accessory to the theft to escape penalty; * * *

For the reasons stated in the text, the deletion of the phrase in question has no bearing on the meaning of "stolen" in Section 3 (even apart from the fact that the phrase was never a part of Section 3). But to the extent that the Senate debate reveals that Congress was interested in preventing "loopholes" by which persons dealing with stolen cars could escape punishment, it illustrates the purpose to deal broadly with all types of wrongful takings.

clarifying amendment was not enacted, there is no basis for inferring that Congress approved the narrow reading of the *Hite* decision. Indeed, the following statement by the Senate Committee on the Judiciary (S. Rep. No. 358) in 1949, when an amendment was introduced to cover vehicles and aircraft "embezzled, feloniously converted or feloniously taken by fraud" (S. 1483, 81st Cong., 1st Sess.), indicates that Congress intended "stolen" to refer to all unlawfully acquired vehicles and disapproved of the narrow construction placed on the term by some courts:

> The present sections of the code herein referred to use the word "stolen" in defining the crime of transporting motor vehicles in interstate or foreign commerce. Some courts have construed the word "stolen" in such a narrow technical sense as not to include an embezzlement or other unlawful or felonious taking while other courts have placed a construction on it sufficiently broad as to include embezzled or otherwise unlawfully or feloniously taken vehicles.
>
> The Justice Department has sought to sustain the broad construction of the existing statute but has not been successful in certain jurisdictions because of existing controlling court decisions. This act will have the effect of making the statutes clearer than they now are, and will make the same acts illegal in all jurisdic-

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trailer and other device . . ."); H. R. 3429, H. R. 3817 (amendment would also include "tractors" with other vehicles), S. 487, S. 1483, 81st Cong., 1st Sess.; H. R. 2925 (tractors), 82d Cong., 1st Sess.; S. 675 (trailers and semi-trailers), 83d Cong., 1st Sess.; H. R. 3702, S. 660, 84th Cong., 2d Sess.

tions, thereby removing the presently existing confusion and uncertainty in the meaning and enforcement of the law. * * *

Since the limitations on the term "stolen" were implanted into the statute by judicial decision, contrary to what we think to be the intent of Congress as shown both by the language of the statute and its legislative history, and since those limitations have not been accepted by a majority of the courts of appeals that have passed on the issue, the failure of Congress to take action on the proposed clarifying amendments has no significance in relation to the problem now before this Court.[9] For the reasons set forth above, we think that, from the time of the enactment of the Motor Vehicle Theft Act in 1919, the term "stolen" was meant by Congress to encompass any wrongful appropriation with intent to deprive the owner of his rights in the property, and that the transportation across state lines of a vehicle thus wrongfully appropriated has been an offense under the statute.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

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DECEMBER 1956.

[9] Cf. *Girouard v. United States*, 328 U. S. 61, 69-70, where this Court said that it is "at best treacherous to find in congressional silence alone" the adoption of a court-made rule of law.

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